

1 MANUELA ALBUQUERQUE, City Attorney SBN 67464
2 MATTHEW J. OREBIC, Deputy City Attorney SBN 124491
3 MOrebic@ci.berkeley.ca.us
4 2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
TEL.: (510) 981-6950
FAX.: (510) 981-6960

5 Attorneys for Defendant Frank Onciano

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8 **UNITED STATE DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 **FRANK CISNEROS; BEATRICE**
12 **CISNEROS; KASI CISNEROS,**
13 Plaintiffs,
14 v.

15 **SERGEANT T. CURTIN, DETECTIVE G.**
16 **PON, OFFICER J. LUNA, OFFICER K.**
DEBLASI, OFFICER J. LOUIS, OFFICER
F.R. ONCIANO, and DOES 1 through 50,

17 Defendants.

18
19 **NO. C 07-02788 JCS**

20 **ANSWER OF DEFENDANT FRANK**
ONCIANO

21
22 Defendant, former officer Frank Onciano (sued herein as Officer F.R. Onciano) answers
23 plaintiffs' Complaint as follows:

24 **FIRST CAUSE OF ACTION**

- 25 1. Defendant admits the allegations of Paragraph 1.
26 2. Defendant denies the allegations of Paragraph 2 due to lack of information.
27 3. Answering Paragraph 3, defendant admits the named defendants were employees of
the City of Berkeley at the time of the incident, and are still so employed, except for this
answering defendant who is now retired.
28 4. Defendant denies the allegations of Paragraphs 4 and 5 due to lack of information.
5. Defendant admits the allegations of Paragraph 6.

1 6. Defendant denies the allegations of Paragraph 7 due to lack of information.
2 7. Answering Paragraphs 8 and 9, defendant admits the officers served a search warrant
3 at 23358 Jorgensen Lane in Hayward on April 20, 2005, and that plaintiffs allege they lawfully
4 resided their, but deny the allegation that the suspect did not reside at the premises, deny the
5 allegation the suspect was not present at the premises, and deny the remaining allegations due to
6 lack of information.

7 8. Defendant admits the allegations of Paragraph 10, except as to ownership of the dog,
8 which defendant denies due to lack of information.

9 9. Answering Paragraph 11, defendant admits that the officers were aware that a pit bull
10 had been seen tied to the front porch of the property, but deny the remaining allegations due to
11 lack of information.

12 10. Answering Paragraph 12, defendant admits that when the officers approached the
13 property, it was not clear where the dog was located or if the dog was on the property at all, and
14 deny the remaining allegations.

15 11. Defendant denies the allegations of Paragraph 13, 14, 15, 16, 17, and 18 because the
16 officers' actions were lawful and proper, and defendant denies that plaintiffs' were injured at all
17 or due to the officers' actions due to lack of information, but defendant admits that the officers'
18 actions were taken under color of law.

19 12. Answering Paragraph 19, defendant admits that the dog was shot and killed, but deny
20 that said action was unlawful or caused to occur by the officers' actions rather than the actions or
21 inactions of plaintiffs or other occupants, and otherwise deny the remaining allegations due to
22 lack of information.

23 | 13. Defendant denies the allegations of Paragraph 20.

SECOND CAUSE OF ACTION

25 14. Answering Paragraph 21, defendant incorporates the prior responses to Paragraphs 1-
26 20.

27 15. Defendant denies the allegations of Paragraph 22 due to lack of information.

28 | 16. Defendant denies the allegations of Paragraph 23.

THIRD CAUSE OF ACTION

17. Answering Paragraph 24, defendant incorporates the prior responses to Paragraphs 1-23.

4 18. Answering Paragraph 25, defendant admits Kasi and Beatrice Cisneros were present,
5 but denies the remaining allegations due to lack of information.

6 | 19. Defendant denies the allegations of Paragraph 26 and 27.

FOURTH CAUSE OF ACTION

8 20. Answering Paragraph 28, defendant incorporates the prior responses to Paragraphs 1-
9 27.

10 21. Answering Paragraph 29, defendant admits Kasi and Beatrice Cisneros were present,
11 but denies the remaining allegations due to lack of information.

12 | 22. Defendant denies the allegations of Paragraph 30 and 31.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint, and each cause of action therein, fail to state sufficient facts to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

18 Plaintiffs were negligent, reckless and careless in and about the matters alleged in the
19 Complaint, and such negligence, recklessness and carelessness was the sole and/or contributing
20 proximate cause of the injuries and damages, if any there were. Therefore, plaintiffs are either
21 barred from any recovery, or any recovery awarded must be reduced in proportion to the amount
22 that plaintiffs' conduct contributed to the alleged damages.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' injuries and damages, if any there were, were caused by other persons beyond the control of the defendants.

FOURTH AFFIRMATIVE DEFENSE

27 Defendant's actions are privileged under applicable statutes and case law.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' state law claims barred by California Government Code sections 815, 815.2, 818, 818.8, 820.2, 820.4, 820.6, 820.8, 821.6, 822.2, 845.2, 845.4, 845.6, and California Penal Code sections 834a, 835, 835a, and 847.

SIXTH AFFIRMATIVE DEFENSE

Defendant's actions were undertaken with the reasonable belief that said actions were valid and constitutionally proper, and that therefore, defendant is entitled to immunity.

SEVENTH AFFIRMATIVE DEFENSE

9 Plaintiffs failed to mitigate their damages, if any there were.

EIGHT AFFIRMATIVE DEFENSE

11 The statute of limitations under Government Code section 945.6(a) (1) and Code of Civil
12 Procedure section 342 bars plaintiffs' state law claims.

14 WHEREFORE, defendant prays that:

- 15 1. the Court give judgment for defendant;

16 2. the Court award defendant costs of suit herein incurred;

17 3. that plaintiffs take nothing by their Complaint; and

18 3. for such other and further relief as the Court may deem proper.

20 | Dated: August 8, 2007

MANUELA ALBUQUERQUE, City Attorney
MATTHEW J. OREBIC, Deputy City Attorney

By:

/s/
MATTHEW J. OREBIC, Attorneys for
Defendants Sgt. T. Curtin, Officer G. Pon, Officer
J. Luna, Officer K. DeBlasi, Sgt. J. Louis and
Frank Onciano